



Proposals for regulations under the Food Act 2014 - Frequently Asked Questions

Why are regulations required?

While the Food Act provides the legal framework, regulations allow for more detailed requirements to help set out how 'things will work' on a more practical level.

Developing regulations allows time for Government to establish systems and processes and to consult on proposals to ensure they are workable for businesses.

Setting requirements in regulations also gives necessary flexibility if, after a period of operation, it is considered necessary to make changes.

How long after consultation concludes will businesses know what the regulations will be?

Following the conclusion of the consultation MPI will assess all submissions in response to the proposals in the consultation document, and make changes to the proposals where appropriate.

MPI also intends to carry out further consultation later in 2015 in some areas to ensure the regulations are clear and practical for businesses.

The regulations will come into effect by 1 March 2016.

What topics do the regulations cover?

The proposals in the document released for consultation cover a wide range of areas to bring the Act into operation, including (but not limited to) requirements for registration and verification (auditing) of businesses, and requirements for safe and suitable food.

These proposals also include requirements for importers of food, cost recovery, infringements, exemptions, and how existing businesses will make the transition from the requirements of the Food Act 1981 to those under the Food Act 2014.

When will MPI consult on notices made under the Food Act?

While regulations are issued by the Governor-General after Cabinet approval, notices are a legal requirement issued by the Chief Executive of the Ministry for Primary Industries. Notices are likely to be issued where requirements must be updated regularly or to address the needs of specific sectors.

The consultation document contains a number of proposals for notices where the Food Act specifies that requirements must be set out in notices rather than regulations. Consultation on the content of these notices has been included in the document because it is considered that this will help readers to better understand how these notices relate to some of the proposed regulations.

MPI intends to develop notices in 2015 and will undertake targeted consultation on these with affected stakeholders.

When will businesses be required to operate under the requirements of the Food Act 2014 and its regulations?

The Food Act determines that the regulations must be in force by 1 March 2016 and will apply to new businesses commencing trading from that date. However, existing businesses will move into the new regime over a three-year period.

What other work is MPI doing to support businesses to meet the requirements of the Food Act and its regulations?

To implement the Food Act and to support the regulations, MPI is developing a package of materials, including:

- a food control plan development manual to assist food businesses to develop a custom food control plan;
- food control plan templates for food retail and food service activities;
- guidance for food businesses operating under national programmes;
- guidance for food sectors that are exempt from having to operate under a national programme or food control plan; and
- guidance for verifiers and evaluators of food businesses operating under the new food safety regime.

Food control plans and national programmes

What food control plan templates are the Ministry for Primary Industries (MPI) going to make available to food businesses when the regulations are in place?

MPI is developing a package of materials to help businesses operate under the new Food Act. This includes developing food control plan templates for food retail activities (covering businesses such as supermarkets, butchers, bakers, fishmongers, delicatessens) and for food service activities (such as cafes, restaurants, takeaways).

MPI is also considering developing a template (or an addition to the template for food service activities) to cover the food activities of residential care facilities.

Can a business choose whether to use a template food control plan decide or a custom food control plan?

The Food Act requires food businesses listed in Schedule 1 of the Food Act to operate under a food control plan. However, the Food Act does not specify how a business must 'develop' its plan – it is the choice of the business. If the business prefers not to use an applicable template, it may register a custom food control plan instead.

Some businesses will be able to use a food control plan template issued by the chief executive of the Ministry for Primary Industries. Others may be able to use a template developed by their industry body and approved by the chief executive (as provided for under section 40 of the Food Act.)

Depending on the type of business, there may not be a suitable food control plan template available. In these instances the business must develop its own custom food control plan. Such plans must be evaluated by an independent evaluator and both the plan and the evaluator's report must be submitted to MPI for registration.

What will a national programme look like?

Businesses subject to a national programme will not be required to register a fully documented plan as a national programme is not a formal document like a food control plan. Rather, businesses subject to national programmes need to comply with their relevant regulations. Businesses operating under a national programme will still need to register with either MPI or a territorial authority though and can do so by providing the details of their business such as the address of the place of businesses and the name of the operator to the registration authority as required by section 83 of the Food Act.

The consultation on the proposed Food Act regulations provides more information for businesses that will need to use a national programme (see sections 4.1 and 4.2 of the consultation document). These proposals relate to relevant registration, verification and food safety/suitability requirements, and record-keeping requirements.

How will the Food Act and its regulations affect businesses currently operating under a risk management programme under the Animal Products Act 1999?

Under certain circumstances, some businesses may be able to have their risk management programme recognised as a food control plan and vice versa.

In many cases businesses subject to risk management programmes will be exporting animal products overseas. Many export countries require official assurances under the Animal Products Act. Such businesses will continue to operate under a risk management programme as recognised under the Animal Products Act.

Businesses that are not exporting to countries that require official assurances, or are not exporting at all, may be able to operate under a food control plan.

Regardless of whether an animal products business operates under a risk-based measure under the Food Act, or a risk management programme under the Animal Products Act, they will have to comply with the requirements of both Acts that apply to their particular activities. The food control plan or risk management programme that a food business registers need to reflect all these requirements.

[Transitioning to the Food Act 2014](#)

When do new and existing businesses have to transition?

New businesses that begin operating on or after the Food Act 2014 commences in full on 1 March 2016 must meet the requirements of the Food Act.

Existing businesses will have a defined period over which to transition after 1 March 2016 as proposed in the schedule under the *Transitional matters* chapter of the consultation

paper. We are proposing a staged approach to transition for existing businesses and their relevant sectors. The consultation paper outlines proposed dates that will apply to each transition period.

MPI wants to make the transition to the new food safety regime as smooth as possible for all affected parties. MPI welcomes submissions on this matter, including identifying areas that submitters feel require simplification, and suggestions for how implementation could work in practice.

When will businesses that are currently using Food Safety Programmes need to register a food control plan?

Many businesses are currently operating voluntarily under a Food Safety Programme. The Food Act 2014 will treat food safety programmes as food control plans until the end of the transition period for the sector in which the business operates.

The chapter in the consultation document entitled *Transitional matters* sets out the proposed dates when each food sector would be required to register a food control plan or operate under a national programme. MPI also welcomes submissions on the suggestion that businesses operating with a Food Safety Programme (including under the Voluntary Implementation Programme) be given until the end of the total transition period (i.e. until 1 July 2019) to register a food control plan under the Food Act 2014.

Cost recovery

MPI is proposing to recover some costs for services, what do the proposed MPI costs relate to?

Only services that MPI provides directly. If a business registers with MPI, the fee outlined in the proposed regulations will apply. It won't apply if a business registers with its territorial authority.

Territorial authorities will set their own fees if businesses are required to instead be registered with them.

Businesses will not be charged by both MPI and a territorial authority for the same service.

Will costs for services such as registration and verification vary between councils?

The Food Act outlines the principles that must be applied by MPI and territorial authorities in setting fees and charges to recover costs. Under the Food Act, territorial authorities have the ability to set their own fees, and the fees they set will vary in line with their individual cost structures and policies. However before setting fees, territorial authorities must consult on their proposed fees.

Other matters

Will the online sales of food be addressed?

The Food Act and its regulations apply to any food for sale. Selling food online is treated like any other 'shop front'. Such businesses may be required to register a food control plan or national programme depending on the risk associated with the food sold.

How will council grading schemes work under the Food Act and its regulations?

Grading schemes are schemes established by Councils, which grade food businesses on their performance according to certain food safety criteria established by their Council.

Grading schemes will not be able to impose additional requirements on businesses over and above the requirements of the regulations.

Where there is no conflict with the Food Act or its regulations, grading schemes can continue.